

AMENDED IN SENATE AUGUST 7, 2000
AMENDED IN SENATE JUNE 20, 2000
AMENDED IN SENATE JUNE 13, 2000
AMENDED IN ASSEMBLY JANUARY 12, 2000
AMENDED IN ASSEMBLY JANUARY 10, 2000
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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 333

**Introduced by Assembly Member Papan
(Coauthor: Assembly Member Lempert)**

February 11, 1999

An act to amend Sections ~~17005.6, 17215, 17403.2, 17403.3, and 17403.4 of~~ 17003, 17200.8, and 17409.1 of, and to add Sections 17005.2, 17005.3, and 17403.5 to, the Financial Code, relating to Internet escrow transactions.

LEGISLATIVE COUNSEL'S DIGEST

AB 333, as amended, Papan. Internet escrow transactions.

~~Existing law~~

The Escrow Law requires that any person who engages in business as an escrow agent, including an Internet escrow agent as defined, within the state be licensed and regulated by the Commissioner of Corporations.

~~This bill would make those provisions not applicable to Internet escrow agents.~~

~~This bill would also create a task force on Internet payment processing and escrow industries to review the need for state regulation of these activities. The task force would report its findings and recommendations to the Legislature no later than January 1, 2002.~~

This bill would implement the following changes relating to activities conducted by Internet escrow companies: (1) expand escrow transactions to include those taking place on the Internet for the sale or transfer of personal property or services, (2) permit Internet escrow transactions using Internet-authorized payment alternatives, and (3) substitute electronic transfers for traditional account transfers.

This bill would also authorize all records required by these provisions to be retained and transmitted to the commissioner in an electronic format. The bill would require that a person possessing knowledge and understanding of the Escrow Law, regulations, and accounting regarding personal property, to be on duty at each business location of a licensed Internet escrow agent corporation during business hours for escrows involving personal property.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 17005.6 of the Financial Code is~~
2 *SECTION 1. Section 17003 of the Financial Code is*
3 *amended to read:*
4 17003. (a) "Escrow" means any transaction—~~wherein~~
5 *in which* one person, for the purpose of effecting the sale,
6 transfer, encumbering, or leasing of real or personal
7 property to another person, delivers any written
8 instrument, money, evidence of title to real or personal
9 property, or other thing of value to a third person to be
10 held by—~~such~~ *that* third person until the happening of a
11 specified event or the performance of a prescribed
12 condition, when it is t hen to be delivered by—~~such~~ *that*
13 *third person to a grantee, grantor, promisee, promisor,*
14 *obligee, obligor, bailee, bailor, or any agent or employee*
15 *of any of the latter.*

1 (b) With regard to Internet escrow companies,
2 “escrow” also includes any transaction in which one
3 person, for the purpose of effecting the sale or transfer of
4 personal property or services to another person, delivers
5 money, or its Internet-authorized equivalent, to a third
6 person to be held by that third person until the happening
7 of a specified event or the performance of a prescribed
8 condition, when it is then to be delivered by that third
9 person to a grantee, grantor, promisee, promisor, obligee,
10 obligor, bailee, bailor, or any agent or employee of any of
11 the latter. third person to a grantee, grantor, promisee,
12 promisor, obligee, obligor, bailee, bailor, or any agent or
13 employee of any of the latter.

14 SEC. 2. Section 17005.2 is added to the Financial
15 Code, to read:

16 17005.2. “Business location” and “business office
17 location” mean a facility or other place of business where
18 a person engages in the business of receiving an escrow
19 for deposit or delivery, but does not include a customer
20 contact center.

21 SEC. 3. Section 17005.3 is added to the Financial
22 Code, to read:

23 17005.3. “Customer contact center” means a facility
24 operated by an Internet escrow agent that exists solely for
25 the purpose of responding to customer electronic
26 messages and telephone inquiries; provided, that no
27 receipt or disbursements relating to an escrow are made
28 from the facility; and provided further, that any
29 documentation or other material generated, transmitted,
30 or otherwise sent from the facility can be reviewed at any
31 time from the business location of the Internet escrow
32 agent.

33 SEC. 4. Section 17200.8 of the Financial Code is
34 amended to read:

35 17200.8. (a) Within the organization of each escrow
36 agent corporation, either as an owner, officer, or
37 employee, there shall be one or more persons possessing
38 a minimum of five years of responsible escrow or joint
39 control experience to be stationed at the main office of
40 the corporation and one or more persons possessing a

1 minimum of four years of responsible escrow or joint
2 control experience stationed at each branch. At least one
3 such qualified person shall be stationed on duty at each
4 business location licensed by this division during the time
5 the location is open for business. A person who has
6 satisfied educational requirements established by the
7 commissioner may substitute education for up to one year
8 of experience.

9 *(b) Subdivision (a) does not apply to an Internet*
10 *escrow agent with respect to escrows involving personal*
11 *property. However, within the organization of each*
12 *Internet escrow agent corporation engaged in the*
13 *business of an escrow involving personal property, either*
14 *as an owner, officer, or employee, one or more qualified*
15 *persons shall possess knowledge and understanding of the*
16 *Escrow Law (as set forth in Division 6 (commencing with*
17 *Section 17000), the rules promulgated thereunder, and*
18 *accounting so that, among other things, appropriate*
19 *books and records are used and maintained in order to*
20 *account for escrows involving personal property. At least*
21 *one qualified person shall be on duty at each business*
22 *location of an Internet escrow agent licensed by this*
23 *division when operations are being conducted that*
24 *require knowledge of accounting and the Escrow Law*
25 *and regulations. An Internet escrow agent shall notify the*
26 *commissioner of the daily business hours during which*
27 *those operations are to be conducted.*

28 *SEC. 5. Section 17403.5 is added to the Financial*
29 *Code, to read:*

30 *17403.5. (a) All records required by this chapter may*
31 *be retained by an Internet escrow agent and provided to*
32 *the commissioner in electronic format.*

33 *(b) All transfers by an Internet escrow agent between*
34 *trust accounts and interest-bearing accounts, and*
35 *between escrow accounts, may be made electronically.*

36 *(c) A statement of account may be delivered by an*
37 *Internet escrow agent to a customer by electronic mail or*
38 *via the Internet, unless otherwise requested by the*
39 *customer.*

1 SEC. 6. Section 17409.1 of the Financial Code is
2 amended to read:

3 17409.1. (a) Each person subject to this chapter shall
4 maintain separate escrow trust accounts for each licensed
5 location. Transfers between accounts are prohibited
6 except by the actual writing of a check from one escrow
7 to the other, and by depositing the check for the account
8 of, and the writing of a receipt for the escrow to which the
9 funds are being transferred. Each transfer shall be
10 properly supported and documented in escrow files by
11 inclusion of escrow instructions executed by the
12 principals authorizing the transfer.

13 (b) With regard to Internet escrow companies,
14 transfers to trust accounts by commercial banks and from
15 operating accounts to cover losses may be made through
16 wire transfer. Receipts for all these transactions may be
17 maintained in electronic form.

18 amended to read:

19 ~~17005.6. Except as provided for in Section 17004,~~
20 ~~“escrow agent” as used in this division includes joint~~
21 ~~control agents, but does not include Internet escrow~~
22 ~~agents.~~

23 SEC. 2. Section 17215 of the Financial Code is
24 amended to read:

25 17215. Whenever the commissioner issues a license or
26 order under this division, the commissioner may impose
27 conditions that are necessary and appropriate to carry out
28 the provisions and purposes of this division.

29 SEC. 3. Section 17403.2 of the Financial Code is
30 amended to read:

31 17403.2. No person subject to this division shall solicit
32 or accept an escrow instruction or amended or
33 supplemental escrow instruction containing any blank to
34 be filled in after signing or initialing of the escrow
35 instruction or amended or supplemental escrow
36 instruction, nor permit any person to make any addition
37 to, deletion from, or alteration of an escrow instruction or
38 amended or supplemental escrow instruction, unless the
39 addition, deletion or alteration is signed or initialed by all
40 persons who had signed or initialed the escrow

1 ~~instruction or amended or supplemental escrow~~
2 ~~instruction prior to the addition, deletion or alteration.~~

3 ~~SEC. 4. Section 17403.3 of the Financial Code is~~
4 ~~amended to read:~~

5 ~~17403.3. At the time of execution a copy of each~~
6 ~~escrow instruction or amended or supplemental escrow~~
7 ~~instruction shall be delivered to all persons executing the~~
8 ~~same.~~

9 ~~SEC. 5. Section 17403.4 of the Financial Code is~~
10 ~~amended to read:~~

11 ~~17403.4. All written escrow instructions executed by~~
12 ~~a buyer or seller, whether prepared by a person subject~~
13 ~~to this division or by a person exempt from this division~~
14 ~~under Section 17006, shall contain a statement in not less~~
15 ~~than 10 point type which shall include the license name~~
16 ~~and the name of the department issuing the license or~~
17 ~~authority under which the person is operating. This~~
18 ~~section shall not apply to supplemental escrow~~
19 ~~instructions or modifications to escrow instructions.~~

20 ~~SEC. 6. (a) The Secretary of the Business,~~
21 ~~Transportation and Housing Agency shall appoint a task~~
22 ~~force on Internet payment processing in escrow~~
23 ~~industries to review the need for state regulation of the~~
24 ~~Internet payment processing and Internet escrow~~
25 ~~industries. If the task force determines that state~~
26 ~~regulation is necessary, the task force shall develop~~
27 ~~recommendations as to the appropriate regulatory~~
28 ~~agency, and the specific statutory provisions necessary to~~
29 ~~implement that state regulation. In considering the need~~
30 ~~for state regulation, the task force shall consider all of the~~
31 ~~following:~~

32 ~~(1) The need to maintain the economic health and~~
33 ~~viability of the Internet.~~

34 ~~(2) The need to foster and promote the growth of~~
35 ~~electronic commerce.~~

36 ~~(3) The national and international nature of the~~
37 ~~Internet.~~

38 ~~(4) Federal regulatory and legislative provisions~~
39 ~~relating to Internet commerce.~~

1 ~~(5) The need to ensure reasonable consumer~~
2 ~~protection.~~

3 ~~(6) Developments in the financial payment in escrow~~
4 ~~industries related to changing technology and the need~~
5 ~~to modernize state regulation of these industries.~~

6 ~~(7) The emergence of new financial or real estate~~
7 ~~services businesses that do not fit into historic regulatory~~
8 ~~models.~~

9 ~~(8) Whether existing agencies are appropriate or~~
10 ~~whether state government needs a new regulatory~~
11 ~~agency to deal with the changes brought about by the~~
12 ~~Internet.~~

13 ~~(b) The task force shall be composed of one~~
14 ~~representative each from the Departments of Real~~
15 ~~Estate, Corporations, and Financial Institutions; five~~
16 ~~representatives of the Internet financial services~~
17 ~~industries, including one representative of an Internet~~
18 ~~escrow company, one representative of an Internet~~
19 ~~payment processing company, one representative of an~~
20 ~~Internet service provider, one representative of an~~
21 ~~Internet loan company, and one representative of an~~
22 ~~Internet portal; three representatives of traditional~~
23 ~~financial or real estate companies; and one representative~~
24 ~~from the Escrow Institute.~~

25 ~~(c) The task force shall report its findings and~~
26 ~~recommendations to the Legislature no later than~~
27 ~~January 1, 2002.~~